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January 10, 2001

Dorothy Attwood, Esq.
Chief, Common Carrier Bureau
Federal Communications Commission
Room 5-C450
445 12th St., SW
Washington, DC 20554

Re: Transition Plan for CC Docket No. 99-68

Dear Ms. Attwood:

Thank you for meeting with members of the competitive industry yesterday concerning the order currently under consideration in the above docket involving inter-carrier compensation for ISP-bound traffic. You are familiar with our views concerning the legal and policy issues implicated by any radical changes in the existing inter-carrier compensation scheme for this traffic, and we will not repeat them here.

We do very much appreciate the Bureau's recognition that any significant change in this area requires a transition that will moderate its effect on CLEC revenues, and permit an efficient and planned implementation by the competitive industry. In this spirit, we tentatively explored during yesterday's meeting with you how a modified mandatory transition plan might facilitate prompt Commission action. Following subsequent discussions among ourselves, we hereby share a more detailed view of such a transition, starting with a short summary of the competitive transition proposal submitted to you in our ex parte of December 18, 2000.

Summary of the Competitive transition proposal submitted December 18, 2000

1. The transition plan would be voluntary for the states, and any state wishing to implement bill-and-keep (or continue bill-and-keep) would first have to follow the Commission's transition plan.

2. Implementation of a transition plan and/or any ultimate inter-carrier compensation mechanism would be strictly prospective.

3. The transition plan and/or any ultimate inter-carrier compensation mechanism would not apply within the service territory of any dominant ILEC which declined to apply the same regime to all local traffic.

4. The transition plan and/or any ultimate inter-carrier compensation mechanism would not purport to alter existing section 252(i) rights.

5. The transition period would be three years with the state-approved inter-carrier compensation rates (calculated pursuant to the Commission's existing reciprocal compensation rules, and subject to review in Federal district courts) applying to traffic below Commission-ordered ratios. These benchmark ratios would be applied to the ratios of inbound to outbound statewide local volumes exchanged between individual local carriers pursuant to an interconnection agreement or tariff within any state. The ratios would be 12-1, 8-1, and 4-1 in each year.

6. CLECs meeting a presumption test similar to that established by the NYPSC would not be subject to the ratios.

7. Above-ratio traffic would be paid at 80% of the below-ratio rate in the first year, 65% during the second, and 50% during the third.

8. The CLECs reserve all their legal and administrative remedies.

Revised Competitive proposal concerning a mandatory transition

1. All of the above conditions and understandings are retained except as expressly addressed here.

2. The transition plan and/or any ultimate inter-carrier compensation mechanism would be mandatory for all states.

3. Above-ratio traffic would be paid at rates of $0.0022/MOU, $0.0018/MOU and $0.0015/MOU during the first, second, and third years of the transition, respectively, except in three situations: (1) where state inter-carrier compensation rates based upon the Commission's existing reciprocal compensation rules are lower, in which case they would apply; (2) where a CLEC has met the NYPSC-like presumption test; or (3) in states that have already adopted bill-and-keep for whatever reason -- and only in states that have already adopted bill-and-keep -- the third year above-ratio transition rate of $0.0015/MOU would apply from the start of the transition until such a state had adopted a reciprocal compensation rate pursuant to the Commission's existing rules, at which time that state rate would be treated like any other state rate during the transition.

Basis for the above-ratio transition rates -- The competitive community does not believe that "market-based reciprocal compensation rates" currently exist, or could exist in light of the ILECs' market power. The creation of arbitration rights in the '96 Act demonstrates that Congress understands this fact, and agrees. The few negotiated settlements that do exist are not inconsistent, since they tend to involve carriers with pressing cash needs, or else also involve settlements of other issues that preclude any assessment of the prospective negotiated inter-carrier compensation rates on a "stand alone" basis (for example, SBC's settlement with ICG was accompanied by a multi-million payment concerning past disputes, according to financial filings).

That said, the above-ratio rates in the revised transition start at a level ($0.0022/MOU) that is: (1) 20% lower than the ILECs' own assumed average reciprocal compensation rate of $0.00275/MOU for 2001 (see the ILECs' October 12, 2000, ex parte); (2) 33% lower than the current applicable rate in New York; (3) 19% lower than the weighted average of rates most recently arbitrated by the states (October 10, 2000, ex parte of Allegiance, Focal, Intermedia, Time Warner Telecom and XO at 1); and (5) similar in pattern and level to recent BellSouth settlements.

4. This revised proposal is offered to facilitate the Commission in taking action promptly, and cannot be taken as an expression of the competitive industry's position in the future if this does not prove to be possible.

Please let us know if we can provide you with any other information on this important topic.

Sincerely,

John D. Windhausen /mwf

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